

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.1256 of 2014

N.Elangovan

.. Petitioner/Complainant

Vs.

1. Manimaran
2. Thiuruguna Aaiyappadurai
3. S.R.Venkatesan
4. Mohanasugumaran
5. V.Annadurai
6. S.Annamalai

.. Respondents/Accused

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order, dated 22.09.2014 in C.C.No.35 of 2014, on the file of the Judicial Magistrate No.I, Tirupattur, Vellore District.

For Petitioner

: Mr.M.Balasubramanian

O R D E R

Criminal Revision case is against the order of the learned Judicial Magistrate No.I, Tirupattur, Vellore District, in C.C.No.35 of 2014, dated 22.09.2014, dismissing the complaint filed by the petitioner.

2. Case of the complainant/petitioner, as deduced from the complaint, are as follows:

The petitioner was working as a Secretary of C.2016, Thirupattur Primary Co-operative Agricultural & Rural Development Bank Ltd., Thirupattur. He was served with a charge memo, by the Special Officer on 12.12.2008. Against which, he preferred a revision, before the 1st accused Officer, under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. However, the said revision came to be dismissed, as not maintainable. Subsequently, he was suspended from service on 12.03.2009, by the Special Officer. Against the suspension, the petitioner filed a revision, which came to be rejected on 08.05.2009.

3. The petitioner has further submitted that being aggrieved by the order of rejection, he preferred Writ Petition Nos.11318 and 11319 of 2009, challenging both the charge memo, dated 12.12.2008 and suspension order, dated 12.03.2009 respectively. While dismissing W.P.No.11318 of 2009, with a liberty to challenge the charge memo, before the 1st accused officer, this Court allowed W.P.No.11319 of 2009, with a direction to the 1st accused to decide the matter afresh. Thereafter, on revision, the 1st accused, vide order, dated 25.01.2010, quashed the charge memo, dated 12.12.2008, with liberty to the Management to initiate action, by framing fresh charges.

4. It is the further case of the petitioner/complainant that despite the directions of this Court, the respondents/accused have failed to comply with the orders passed in the revision petition and thereby, illegally continued him under suspension, violating the instructions contained in Circular No.9/2010, issued by the Registrar of Co-operative Societies, Chennai, vide Rc.No.106954/09(P), dated 22.02.2010. As per the communication, dated 03.12.2012, in case of any violation of the rules or the above circular, by the Officers of the Co-operative Department, the aggrieved person can proceed against them, in the manner known to law in a Criminal Court and it does not require any sanction, under Section 197 Cr.P.C. Hence, he has preferred a criminal complaint.

5. Before the trial Court, the petitioner has inter alia contended that though the Regional Joint Registrar, has set aside the charges, dated 12.12.2008, he ought to have been reinstated in service immediately, till his retirement. During the period of suspension, he was not paid the subsistence allowance. The intentional prolonged suspension would lead to non-payment of Dearness Allowance, from time to time. His pay in the new scale, with effect from 01.01.2011, was not fixed.

6. After perusing the complaint and the sworn statement of the petitioner/claimant, the learned Judicial Magistrate No.1, Thirupattur, Vellore District, vide order, dated 22.09.2014, has passed the following orders,

"21. The complainant has admittedly suspended from his service. The complainant had also not allowed to retirement because of his suspension. The complainant grievance is that after he was suspended from his service disciplinary proceeding were not initiated within a reasonable time. The complainant has also approached the Hon'ble High Court for redressing his grievance. This Court considers that suspending the employee even on wrongful ground and prolonged suspension without framing any charge will not per reconstitute any offences. If the complainant

considered that his suspension is not legal he can very well approach a civil Court to set aside his order of suspension. Likewise a dismissed employee has to approach the labour Court if he get failed in conciliation proceeding. These are all the avenues known for law. But the complainant who is complaining that he was wrongfully suspended from his service and suffered a prolonged suspension without framing charges wanted this Court to take criminal action against the alleged responsible persons. This Court considers that the remedy for the complainant is not before this Court and he chosen a wrong forum to canvas his claim.

22. The Charge memo issued against the complainant was not entirely set aside. The fresh charges are yet to be framed against the complainant as per the earlier charge memo. In such circumstances, it cannot be construed that the accused person framed incorrect record as per Section 167 IPC. Likewise Section 182 would attract only when false information with intent to cause public servant to use his lawful power to the injury of another person. Likewise wrongful suspension would also not amounts to an offence of defaming a person under Section 500 IPC. Thus the allegations levelled in the complaint would not attract any offences much less than the alleged one. Hence, this Court considered that this complaint is not fit to take on file and liable to be dismissed, under Section 203 Cr.P.C."

7. Assailing the correctness of the order, dated 22.09.2014, made in C.C.No.35 of 2014, on the file of the Judicial Magistrate No.I, Tirupattur, Vellore District, Mr.M.Balasubramanian, learned counsel for the petitioner submitted that the learned Judicial Magistrate has failed to consider the order of the Registrar of Co-operative Societies, Chennai, dated 03.12.2012, wherein, he has stated that if any Additional Registrar, Joint Registrar, Deputy Registrar, Special Officer, has violated the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Rules framed thereunder, by-laws and circulars, issued by the Registrar of Co-operative Societies, Chennai, there is no need to obtain any prior permission for prosecution.

8. Learned counsel for the petitioner further submitted that the learned Judicial Magistrate has also failed to appreciate that the respondents have acted against the statutory provisions, contrary to the rules and by-laws, directions issued by this Court in the above writ petitions, failed to pay subsistence allowance and thus, acted against the statutory provisions and thereby, the acts attract offences, under Sections 167, 182, 499 and 500 IPC.

9. It is also the submission of the learned counsel for the petitioner that by affixing the orders of suspension, the respondents have tarnished the image of the petitioner in the eye of the customers, public and relatives and thus, committed an offence under Section 500 IPC. He further added that when 29 documents are filed, in support of the complaint, the learned Judicial Magistrate, without considering the same, in proper perspective, has dismissed the complaint, in exercise of powers, under Section 203 of the Code of Criminal Procedure Code.

Heard the learned counsel for the parties and perused the materials available on record.

10. Reading of the complaint discloses the grievance of the petitioner is that the petitioner was placed under suspension, disciplinary proceedings were initiated, pay was not fixed and the orders issued by this Court were not implemented in letter and spirit. Perusal of the order made in W.P.No.11319 of 2009, shows that being aggrieved by the order of suspension, dated 12.03.2009, passed by the Special Officer, Tirupathur Co-operative Agricultural and Rural Development Bank, Tirupathur, Vellore District, revision petition has been filed before the Joint Registrar of Co-operative Societies, Vellore Region, Vellore, under Section 153 of the Act. The said revision petition has been rejected on the grounds inter alia that the revision would lie only against the final order. Rejection was challenged in a writ petition. By observing that as per the provisions of the Tamil Nadu Co-operative Societies Act, 1983, the Registrar is competent to entertain the revision, on the facts and circumstances of the case, this Court, by order, dated 04.08.2009, has set aside the order, dated 08.05.2009, passed by the Joint Registrar of Co-operative Societies, Vellore Region, Vellore and directed the said authority to consider the case on merits.

11. In another writ petition in W.P.No.11318 of 2009, the petitioner has challenged the proceedings, dated 12.12.2008, ie., the charge memo issued to the petitioner. When the matter came up for hearing, learned counsel for the petitioner therein, himself has submitted that as against the said order, a revision petition had already been filed before the Joint Registrar of Co-operative Societies, Vellore Region, Vellore and that the same was rejected on 31.12.2008 and therefore, sought for permission of this Court to challenge the said order. Accordingly, it has been granted.

12. In the letter, dated 07.05.2010, addressed to the Special Officer, Tirupathur Co-operative Agricultural and Rural Development Bank, Tirupathur, Vellore District, the petitioner has stated that vide order in Revision Petition Nos.22 and 23 of 2009, dated 25.01.2010, charge memo, dated 12.12.2008, has been set aside and therefore, sought for a direction to re-instate him in service.

13. From the above representation, it could be deduced that while passing orders, in the revision petitions, a direction has been given to dispose of the disciplinary proceedings, within a period of two months. Further representation, dated 11.08.2011, is to the effect that subsistence allowance was not paid and suspension ought not to have been extended for more than six months, in terms of the abovesaid circular.

14. Until, the representation, dated 11.08.2011, the petitioner has been litigating, challenging the orders of suspension and charge memos issued, by submitting revision petitions before the competent authority. In the representation, dated 11.08.2011, the petitioner has submitted that he was put to financial loss, mental agony and loss of reputation.

15. Perusal of the representation, dated 03.04.2012, submitted to the Special Officer, Tirupathur Co-operative Agricultural and Rural Development Bank, Tirupathur, Vellore District, shows that inspite of the directions of the Registrar of Co-operative Societies in Rc.No.15851/2001, ARDB-2, dated 21.02.2011 and the consequential instructions, vide letter of the Joint Registrar of Co-operative Societies, Vellore Region, Vellore, in Rc.No.1804/2011, B3, dated 25.02.2011, pay of the petitioner was not fixed properly, as per the new Rules and that the Dearness Allowance was not increased and paid, as per the Government Order No.383, Finance (Dearness Allowance) Department, dated 01.07.2010.

16. When the petitioner has sought for information, as to whether, prior permission is required, for filing a case against the respondents, for the offences under the Indian Penal Code, a reply, dated 03.12.2012, has been given by the Public Relation Officer, Office of the Registrar of Co-operative Societies, stating that for filing a criminal complaint, prior permission is not required.

17. After nearly two years, the petitioner seemed to have presented the complaint, dated 10.03.2014, to the Judicial Magistrate No.1, Thirupattur, Vellore District, under Section 200 Cr.P.C., r/w. Sections 167, 182, 499 and 500 IPC. Till 201 and till such time, it was never the case of the petitioner that the act of the respondents attracted the offences alleged. Perusal of the impugned order shows that the learned Judicial Magistrate has considered the case on merits, in terms of Section 203 of Criminal Procedure Code, which reads that, "if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record

his reasons for so doing."

18. At this juncture, this Court also deems it fit to extract Section 202 of the Criminal Procedure Code, as follows:

"202. Postponement of issue of process.-

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

19. In *Rosy v. State of Kerala* reported in (2000) 2 SCC 230, the Apex Court held that the inquiry under Section 202 is of limited nature. Firstly, to find out whether there is prima facie case in issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose being of finding out "whether or not there is sufficient ground for proceeding against the accused".

20. Perusal of the complaint and the materials enclosed in the typed set of papers, makes it clear that the intention of the petitioner is not bona fide. All that is alleged against the respondents is failure to exercise their jurisdiction properly and the orders passed in the proceedings, were not implemented promptly and in letter and spirit. The learned Judicial Magistrate has properly considered the merits of the case and passed a reasoned order, as extracted extra. The contentions with regard to financial loss, mental agony and loss of reputation cannot be countenanced in law. Merely because, no permission is required to file a case, against the respondents, for the offences, under the provisions of the Indian Penal Code, it cannot be contended that in every complaint, filed before the learned Judicial Magistrate, summons have to be issued, without reference to the provisions of the Code of Criminal Procedure. There are no merits in the revision, warranting interference.

21. Accordingly, the Criminal Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm
To

1.The Judicial Magistrate No.I,
Tirupattur, Vellore District.

2.The Chief Judicial Magistrate, Tirupathur, Vellore District.

1 cc to Mr. M.Balasubramanian, Advocate, SR.No.3313

Cr1.R.C.No.1256 of 2014

sai(co)
pmk.22.1.2015

WEB COPY